

REMARKS

Claims 1-20 are pending in the present application. Claims 10-20 have been previously withdrawn. In this Response, claim 1 has been amended. No new matter has been added.

Claims 1-9 are rejected under 35 U.S.C. § 112, second paragraph. Claims 1-9 are also rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,542,905 to Fogel (“Fogel”).

Rejection of Claims 1-9 Under 35 U.S.C. § 112, Second Paragraph

Claims 1-9 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, on page 2 of the Office Action, Examiner states that “[i]t is not clear how the recited steps in the body of [claim 1] achieve the ‘identifying plausible sources or errors’ as recited in the preamble.” Claim 1 has been amended herein to recite “determining by probabilistic induction at least one cause based on the change of value in the at least one variable of the risk assessment system, wherein the at least one cause is a plausible source of error.” These amendments clarify the use of probability to determine “plausible sources of error” of an observed effect. Accordingly, claim 1 particularly points out how the recited steps in the body of the claim “identify[] plausible sources of errors,” as recited in the preamble of claim 1.

Because independent claim 1 is patentable for reasons stated above, dependent claims 2-9 are also patentable for the same reasons. Therefore, the undersigned representative respectfully requests that the Examiner withdraw the rejection of claims 1-9 under 35 U.S.C. § 112, second paragraph.

Rejection of Claims 1-9 Under 35 U.S.C. § 103(a)

Claims 1-9 are rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,542,905 to Fogel (“Fogel”). This rejection is respectfully traversed.

Pursuant to the requirements for establishing a *prima facie* case of obviousness under 35 U.S.C. §103, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Referring to MPEP Section 2142,

[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on the applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

(emphasis added). Fogel does not teach or suggest all of the claim limitations. More specifically, Fogel does not teach or suggest “evaluating the initial probability of the first hypothesis based on the change of value in the at least one variable,” as recited in claim 1. On page 3 of the Office Action, the Examiner, citing col. 10, lines 1-54, asserts that Fogel discloses a method of “evaluating the initial probability of the first hypothesis.” However, the Examiner’s citation does not support this “evaluation” and neither does the remainder of Fogel.

Fogel’s initial probability of a first hypothesis is limited to previously known statistical data captured from large populations. This probability is a *constant* – it is never changed during the data integrity test, or even evaluated for its own accuracy or integrity. Fogel’s method first subjects pieces of data to data integrity testing and are then weighs and combines the data to assess the overall data integrity of a health care provider. *See* col. 10, lines 18-54. The results of the integrity tests are then used to determine probable procedural sources of error along with suggestions for fixing these procedural errors, but the statistical information used to conduct the initial data integrity checks is not evaluated in any way. *Id.* The variables are weighted in different tests to correspond to their importance in protecting a health care provider from audits, but Fogel does not recite probabilistically inducing causes to evaluate the initial probability of the first hypothesis.

In claim 1 of the present application, the probability of the initial hypothesis in the claimed subject matter may be based on many factors, including, but not limited to, advice of

an expert, subjective beliefs, or actual statistical data. *See* p. 21, lines 4-8. As a result, by being based on a change in the at least one variable, this initial probability of the hypothesis can be evaluated and can be dynamically adjusted to accurately reflect real data. In contrast, the statistical data used in Fogel models the general population, is assumed to be accurate, and cannot be automatically updated to reflect new knowledge. Thus, Fogel fails to teach or suggest evaluating the initial probability of the hypothesis because Fogel keeps this data constant.

Thus, Fogel does not teach or suggest “evaluating the initial probability of the first hypothesis based on the change of value in the at least one variable,” as recited in claim 1. Because independent claim 1 is patentable over Fogel for the reasons stated above, claims 2-9 are patentable over the cited art for the same reasons stated above. Therefore, the undersigned representative respectfully requests that the Examiner withdraw the rejection of claims 1-9 under 35 U.S.C. § 103(a) as being anticipated by Fogel.

CONCLUSION

The undersigned representative respectfully submits that this application is in condition for allowance, and such disposition is earnestly solicited. If the Examiner believes that the prosecution might be advanced by discussing the application with the undersigned representative, in person or over the telephone, we welcome the opportunity to do so. In addition, if any additional fees are required in connection with the filing of this response, the Commissioner is hereby authorized to charge the same to Deposit Account No. 501458.

Respectfully submitted,

Date: 6/5/07
KILPATRICK STOCKTON LLP
Suite 900
607 14th Street, N.W.
Washington, D.C. 20005
(202) 508-5800

By: Eric L. Sophr
Eric L. Sophr
Registration No. 48,499